Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98

To: The Commission

COMMENTS OF CENTENNIAL CELLULAR CORP.

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SUMMARY

Centennial Cellular Corp. ("Centennial"), as the licensee of a 30 MHz block of Personal Communications Service ("PCS") spectrum in the Puerto Rico - U.S. Virgin Islands Major Trading Area, and through its wholly owned subsidiary, Lambda Communications, Inc. ("Lambda") intends to provide a full array of interstate and intra-island telecommunications services in the Commonwealth of Puerto Rico. As such, the rules adopted by the Commission to implement the local competition provisions of the

Telecommunications Act of 1996 ("1996 Act") are critical to ensure that Centennial and Lambda are afforded a fair opportunity to compete against the Puerto Rico Telephone Company ("PRTC"), the incumbent local exchange carrier ("ILEC"). Centennial's comments in this proceeding will be limited to the need for: (1) national standards governing the good faith negotiations requirement set forth in Section 251(c); (2) Commission guidance on Section 251(f)(2) and (3) clarification that the Commission will assume the responsibilities of a State commission where there is no State commission to fulfill the obligations assigned to State commissions by Congress in the 1996 Act.

Based in large part on Centennial's experience in attempting to negotiate the terms and conditions of interconnecting its PCS system with PRTC's local exchange network, as well as Lambda's efforts to obtain reasonable interconnection with PRTC, Centennial believes that it is critical for the Commission to establish enforceable national guidelines governing "good faith" interconnection negotiations. New competitors seeking interconnection are at the mercy of ILECs and their bottleneck network facilities, and it is the new competitors which will suffer the consequences from delay.

In promulgating "good faith" negotiation guidelines, the Commission should recognize that any standards must include both

the affirmative duty to actively participate and work toward concluding interconnection agreements and a requirement that the ILECs not negotiate in bad faith or purposely attempt to slow down or delay negotiations. As a starting point, Centennial urges the Commission to require that ILECs, within 30 days of receiving an interconnection request, provide the requesting telecommunications carrier with a draft interconnection agreement, together with proposed rates and cost justification material. Moreover, because ILECs have both the ability and the incentive to delay the resolution of interconnection negotiations, the Commission should establish fines and/or other appropriate penalties for the failure to negotiate in good faith.

Section 251(f)(2) provides the states and the local exchange carriers ("LECs") with a procedure by which a LEC may be able to obtain a suspension or modification of the interconnection obligations contained in subsections (b) and (c) of Section 251. Centennial submits that the Commission can and should establish standards to guide the State commissions in interpreting the criteria set forth in Section 251(f)(2). Specifically, Centennial notes that the legislative intent of this provision is very specific in stating that Section 251(f)(2) is to be used to create a "level playing field". Indeed, the protection afforded a LEC in Section 25 (f)(2) must be limited to those situations

where a modification or suspension of one or more interconnection obligations would promote the establishment of a "level playing field."

The legislative history states that Section 251(f)(2) is particularly applicable where "a telecommunications carrier that is a large global or nationwide entity that has financial or technological resources that are significantly greater than the resources of the company or carrier" requests interconnection with the petitioning local exchange carrier. Section 251(f)(2) is definitely not intended to protect local exchange carriers from interconnection obligations to smaller or similarly-sized carriers that have fewer or similar resources.

Section 251(f)(2) must be viewed as a vehicle to promote competition in the local exchange arena. Accordingly, the Commission should issue guidelines that clearly reflect that the discretion of the State commissions to entertain such a petition is very limited.

Finally, in drafting Section 252, Congress made a fundamental assumption - that each State has a commission with authority to carry out its responsibilities under Section 252. However, while that may be a correct assumption for each of the 50 states, it is an incorrect assumption for the Commonwealth of Puerto Rico. Accordingly, the Commission must clarify that the

lack of a State commission with authority to fulfill the statutory obligations that Congress has assigned to State commissions constitutes a per se failure to act within the meaning of Section 252. As a prospective interconnector, Centennial needs certainty from the Commission that it will immediately assume the role of the state commission in Puerto Rico for purposes of Section 252 just as it will in a situation where a State commission fails to act.

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To: The Commission

COMMENTS OF CENTENNIAL CELLULAR CORP.

Centennial Cellular Corp. ("Centennial"), by its attorneys, herein comments on certain aspects of the Commission's notice of proposed rule making ("Notice") released on April 19, 1996 in the above-captioned proceeding. Centennial's comments will be limited to the need for national standards governing the good faith negotiations requirement, the need for Commission guidance on Section 251(f)(2) of the Telecommunications Act of 1996,[1] and the need for clarification that the Commission will assume the responsibilities of a State commission where there is no State commission to fulfill the obligations assigned to State commissions by Congress in the 1996 Act.

Centennial is a publicly traded Delaware corporation primarily engaged in the provision of Commercial Mobile Radio Services ("CMRS"). In particular, Centennial, through subsidiaries and affiliates, provides cellular telecommunications

[1]Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act").

service in 28 markets and is itself the licensee of a 30 MHz block of Personal Communications Service ("PCS") spectrum in the Puerto Rico-U.S. Virgin Islands Major Trading Area.[2] In addition, Centennial, through its wholly-owned subsidiary, Lambda Communications, Inc. ("Lambda"), has obtained authority from the Puerto Rico Public Service Commission to provide certain intra-island telecommunications services in Puerto Rico. Lambda intends to provide a full array of interstate and intra-island telecommunications services, including access and transport services in Puerto Rico.

I. THE COMMISSION MUST ESTABLISH NATIONAL STANDARDS TO GOVERN THE GOOD FAITH NEGOTIATION OBLIGATION CONTAINED IN SECTION 251(c)(1) OF THE 1996 ACT

The Commission requests comment on the extent to which it "should establish national guidelines regarding good faith negotiation under Section 251(c)(1), and on what the content of those rules should be."[3] Based in large part on its experience

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[2]Centennial, through it subsidiaries and affiliates, also holds Specialized Mobile Radio ("SMR") authorizations in various locations.

[3]Notice at ¶47. Section 251(c) sets forth the duties and obligations of incumbent local exchange carriers ("ILECs") in the development of competitive markets. Section 251(c)(1) specifically requires ILECs, in reaching agreements with requesting telecommunications carriers on the particular terms and conditions necessary to satisfy the provisions of Section 251, to negotiate in good faith.

in attempting to negotiate the terms and conditions of interconnecting its PCS system with the Puerto Rico Telephone Company's ("PRTC") local exchange network, as well as Lambda's efforts to obtain reasonable interconnection with PRTC, Centennial believes that it is critical for the Commission to establish enforceable national guidelines governing "good faith" interconnection negotiations.

New competitors seeking interconnection are at the mercy of incumbent carriers and their bottleneck network facilities, and it is the new competitors which will suffer the consequences from delay. The Commission has recognized this fact in noting that during "interconnection negotiations, a carrier may exhibit anticompetitive conduct by causing delays in the negotiating process, which in turn would delay service to the other party's customers and place them at a competitive disadvantage...."[4] Accordingly, Commission rules in this area will play a key role in helping requesting telecommunications carriers more rapidly enter the local exchange marketplace by reducing or avoiding unnecessary negotiation conflicts with incumbent local exchange

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[4]In the Matter of the Need to Promote Competition and Efficient Use of Spectrum For Radio Common Carrier Services, *Memorandum Opinion And Order On Reconsideration*, 66 RR 2d 105 (1989) ("*Cellular Interconnection Reconsideration Order*") at ¶16.

carriers ("ILECs").[5]

If requesting telecommunications carriers are unable to reach interconnection agreements with ILECs on their own through voluntary negotiations, Section 252 of the 1996 Act permits the carriers or any other parties to the negotiation to request that a State commission mediate or, after 135 days of such negotiations to petition a State commission to arbitrate any open issues. However, agreements reached through voluntary negotiations carry significant advantages and should be encouraged by the Commission. First, reaching voluntary interconnection agreements will speed the delivery of competitive local exchange service. Second, avoiding arbitration will conserve the scare resources of both State commissions and new competitors. Thus, to the extent Commission "good faith" negotiating guidelines can facilitate private negotiations and help the parties avoid arbitration, such rules should be established. Moreover, whereas many parties may be negotiating

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[5]The Commission has recognized that "clarification of the term 'good faith' will facilitate negotiations and help reduce the number of disputes that may arise over varying interpretations of what constitutes good faith." In the Matter of Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Band, Implementation of Sections 3(n) and 322 of the Communications Act, Regulatory Treatment of Mobile Services, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *First Report and Order, Eighth Report and Order, And Second Further Notice of Proposed Rulemaking*, 11 FCC Rcd 1463 (1995) at ¶286.

agreements in various states, such rules should be "national" rules to provide certainty and consistency.

In promulgating "good faith" negotiation guidelines, the Commission should recognize that any standards should include not only the affirmative duty to actively participate and work toward concluding interconnection agreements, but should also require ILECs not to negotiate in bad faith or purposely attempt to slow down or delay negotiations. Unfortunately, aside from an ILEC's outright refusal to negotiate, a determination of good/bad faith during a negotiation is a subjective, fact-specific matter. This is especially true in light of the fact that even where both parties are truly negotiating in good faith, an agreement may not be reached.[6]

The difficulty of defining or quantifying good/bad faith negotiations, however, is not a reason to avoid the subject. Instead, the inherent difficulty of the question speaks volumes about the need for the Commission to at least establish a framework so that incumbent monopolists are not able to manipulate the negotiation process and thereby forestall competition with impunity. Moreover, because ILECs have both the

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[6]The Commission has recognized that good faith negotiations do not always ensure that an agreement will be reached. See e.g., WKBN B/casting Corp., *Memorandum Opinion and Order*, 30 FCC 2d 985 (1971).

ability and the incentive to delay the resolution of interconnection negotiations, the Commission should establish fines and/or other appropriate penalties for the failure to negotiate in good faith. The Commission has taken a strong position on the imposition of penalties for the failure to negotiate in good faith in other contexts, and should do the same with respect to ILECs that fail to negotiate their Section 251(c) obligations in good faith.[7]

In the Commission's effort to articulate good faith interconnection negotiation standards, Centennial's negotiating experience with PRTC the monopoly ILEC serving the Commonwealth of Puerto Rico, should prove instructive.[8] Centennial first

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[7]For example, in the context of its microwave relocation rules, the Commission noted that "penalties for failure to negotiate in good faith should be imposed on a case-by-case basis. We emphasize, however, that we intend to use the full realm of enforcement mechanisms available to us in order to ensure that licensees bargain in good faith." Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, *First Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 95-157, FCC 96-196 (released April 30, 1996) ("Microwave Relocation Order") at ¶22.

[8]A more detailed account of Centennial's efforts to obtain a reasonable interconnection agreement, and PRTC's refusal to negotiate in good faith, can be found in comments submitted by Centennial on March 4, 1996 in the Commission's *LEC/CMRS Interconnection Proceeding*. See Comments of Centennial Cellular Corp. at Exhibit 1 ("The Puerto Rico Case Study"), In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, FCC 95-505, *Notice of Proposed Rulemaking* (released Jan. 11, 1996).

requested interconnection with the PRTC network in March, 1995. Yet, more than one-year later, no agreement has been reached. During this time, Centennial has endured a wide -- and seemingly endless --- variety of stalling and delay tactics that, taken together, have amounted to an outright denial of interconnection.[9] PRTC's tactics have included:

(1) a failure to timely respond to Centennial's initial interconnection request;

(2) improperly linking Centennial's PCS interconnection request with non-related issues involving a Centennial affiliate;

(3) providing a draft interconnection agreement completely devoid of any rates, charges or other pricing information and expecting Centennial to negotiation the non-price terms in a vacuum, then claiming that negotiations are moving forward because relatively minor and often standard contract provisions have been discussed;

(4) requiring that Centennial's PCS interconnection request be submitted on an "Access and Traffic Service Request" form when this form contained no additional information necessary for the completion of an interconnection agreement;

(5) offering Centennial, as its only option, a PCS interconnection arrangement pursuant to a cellular tariff which Centennial had already indicated was unacceptable;

(6) waiting seven months from the original interconnection request to provide rates and then refusing to provide any cost support material to justify the reasonableness of such rates when Centennial challenged the rates as being unreasonably high;

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[9]See Centennial Cellular Corp. v. Puerto Rico Telephone Company, *Formal Complaint*, FCC File No. E-96-13 (filed December 1, 1995).

(7) using the 1996 Act as justification for withdrawing its rate proposal and stating that a new cost study would be undertaken;

(8) finally providing new rates (nearly a year after the initial request), but loading them with rate elements unique to the interexchange environment (such as a residual interconnection charge, information surcharge, and a tandem switching surcharge) or not providing any cost justification.

Individually, none of these tactics would likely support a finding of bad faith negotiation. Collectively however, they evidence a pattern of obvious delay and a conscious attempt to thwart competition. This is why the Commission must establish a framework of what constitutes good/bad faith negotiation by providing examples of acceptable/unacceptable negotiating behavior.

The Commission recently took a similar approach in the context of its microwave relocation proceeding. The Commission defined "good faith" by articulating actions or behavior that would be considered evidence of good/bad faith. For example, the Commission concluded that good faith requires each party to the negotiations to provide information to the other party that is reasonably necessary to facilitate the relocation of the incumbent. While holding that the question of whether parties are negotiating in good faith should be evaluated on a case-by-case basis under basic principles of contract law, the Commission listed several specific factors that it would consider in

evaluating claims that a party has not negotiated in good faith.[10]

Centennial's experience in dealing with PRTC provides a perfect example of the problems associated with attempting to negotiate an interconnection agreement with an ILEC and highlights in dramatic fashion the need for Commission action. As a starting point, Centennial urges the Commission to require that ILECs, within 30 days of receiving an interconnection request, provide a draft interconnection agreement, together with proposed rates and cost support material, to the requesting telecommunications carrier. In light of the fact that any party may request arbitration to resolve open issues within 135 days of the initial interconnection request, requiring a draft agreement within those first 30 days is entirely reasonable. Moreover, because the 1996 Act requires that rates be cost justified, it is logical to mandate that the ILECs (*i.e.*, the parties with access

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[10]These factors include, *inter alia*: (1) whether the PCS licensee has made a bona fide offer to relocate the incumbent to comparable facilities; (2) if the microwave incumbent has demanded a premium, the type of premium requested, and whether the value of the premium as compared to the cost of providing comparable facilities is disproportionate; (3) what steps the parties have taken to determine the actual cost of relocation to comparable facilities; and (4) whether either party has withheld information requested by the other party that is necessary to estimate relocation costs or to facilitate the relocation process. Microwave Relocation Order at ¶21.

to the cost support data[11]) produce the first draft of the proposed agreement. Centennial believes these guidelines will help guard against the type of behavior described above. Finally, Centennial stresses that for such rules to be meaningful, the Commission's policies must be buttressed by certain penalties for non-compliance.

II. THE COMMISSION MUST PROVIDE THE STATE COMMISSIONS WITH GUIDANCE ON HOW TO INTERPRET SECTION 251(f)(2) OF THE TELECOMMUNICATIONS ACT OF 1996

The Commission asks whether it "can and should establish some standards that would assist the states in satisfying their obligations" under Section 251(f)(2).[12] Section 251(f)(2) states as follows:

> (2) SUSPENSIONS AND MODIFICATIONS FOR RURAL CARRIERS - A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification -

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[11]The Commission should make it clear that cost support must be provided not just for physical network elements and transport and termination charges but for all components of the agreement including, but not limited to, NXX establishment codes and directory assistance

[12]Notice at ¶261

> (A) is necessary -
>
> (i) to avoid a significant adverse economic impact on users of telecommunications services generally;
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> (ii) to avoid imposing a requirement that is unduly economically burdensome; or
>
> (iii) to avoid imposing a requirement that is technically infeasible; and
>
> (B) is consistent with the public interest, convenience, and necessity.
>
> The State commission shall act upon any petition filed under this paragraph within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.

It is clear that the interconnection obligations established in Section 251 of the 1996 Act are the centerpiece of the Congressional efforts to make the local exchange marketplace competitive. In Section 251(d)(1), Congress charges the Commission with the responsibility of establishing rules and regulations to govern the implementation of these interconnection obligations. Section 251(f)(2) provides the states and the local exchange carriers ("LECs") with a procedure by which a LEC may be able to obtain a suspension or modification of the interconnection obligations contained in subsections (b) and (c) of Section 251. In view of the importance of the interconnection obligations in establishing the local exchange competition

landscape and the Commission's assigned role in implementing the Congressionally mandated obligations, Centennial submits that the Commission can and should establish standards to guide the State commissions in interpreting the criteria set forth in Section 251(f)(2).

As a preliminary matter, Centennial notes that the title given to Section 251 f)(2) by Congress - Suspensions and Modifications For Rural Carriers - indicates that the provisions apply only to "rural carriers." However, while Congress does not expressly define the term "rural carriers", Congress proceeds to define the class of carriers that can seek a suspension or modification of one or more of the interconnection obligations contained in Sections 251(b) and (c) as "a local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide." This definition appears to include several Tier 1 LECs such as Southern New England Telephone Company,[13] Cincinnati Bell, Alltel Services Corp., Puerto Rico Telephone Company ("PRTC"), Century Telephone Enterprises and Telephone and Data Systems. The fact that

[13]On March 15, 1996, Southern New England Telephone Company ("SNET") filed a "Petition For Suspension Of Section 251(c)(4) Of The Telecommunications Act Of 1996" with the State of Connecticut Department of Public Utility Control ("CDPUC"). SNET argues that its Section 251(c)(4) obligations should be suspended pursuant to Section 251(f)(2). See CDPUC Docket No. 96-03-19.

carriers of this size appear to have been designated as "rural carriers" raises questions as to what was the Congressional intent behind this section.

The legislative history of the 1996 Act explains the purpose of Section 251(f)(2) and how to interpret the tests it contains. The Senate version of what is now Section 251(f)(2) is remarkably similar to the final product and is clearly the basis for Section 251(f)(2).[14] The legislative history indicates that it was the Senate's intent that

> the Commission or a State shall, consistent with the protection of consumers and allowing for competition, use this authority to provide a level playing field, particularly when a company or carrier to which this subsection applies faces competition from a telecommunications carrier that is a large global or nationwide entity that has financial or technological resources that are significantly greater than the resources of the company or carrier.[15]

This language clearly indicates that Section 251(f)(2) should be read narrowly, to permit the filing of a petition for suspension

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[14]See Section 251(i)(3) of S. 652 which defined the class of eligible carriers as LECs "with fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide." In contrast, Section 242(e) of H.R. 1555 defined the class as those LECs that have "in the aggregate nationwide, fewer than 500,000 access lines installed." Moreover, the House version gave no authority to the state commissions in this matter.

[15]H.R. Rep. No. 458, 104th Cong., 2nd Sess. at 120 (1996); see also S. Rep. No. 23 104th Cong., 1st Sess. at 22 (1995).

or modification of the Sections 251(b) and (c) interconnection requirements only "to provide a level playing field." In this manner, Congress expressed its recognition that a "level playing field" must be created rather than assumed.[16] That is, a new entrant seeking interconnection and an entrenched monopolist LEC are not in equal positions at the starting gate and the State commission must determine whether granting the relief sought in a petition filed pursuant to Section 251(f)(2) would further the goal of establishing a level playing field. Section 251(f)(2) is clearly a pro-competition provision and State commissions should not turn this provision on its head to protect LECs against the very competition contemplated by the 1996 Act.

The State commission's inquiry under Section 251(f)(2) is a fact-specific one. This provision contemplates the filing of petitions that respond to specific interconnection requests. That is, in order for a qualifying LEC to be able to file a petition under this section, the LEC must have received an interconnection request. Moreover, the petition should seek relief of specific interconnection obligations relative to the particular interconnection request that prompted the filing of

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[16]See 142 Cong. Rec. S688 (daily ed. Feb. 1, 1996) (statement of Sen. Hollings) ("[W]e must set the rules in a way that neutralizes any party's inherent market power, so that robust and fair competition can ensue.").

the petition. LECs should not be able to seek generalized relief from their interconnection obligations regardless of whether they have received an interconnection request or, if they have received such a request, regardless of who is the requesting carrier.

The identity of the carrier requesting interconnection is particularly important in light of the legislative history which makes clear that the provision is intended to provide eligible local exchange carriers meeting the stated criteria with a means of avoiding certain interconnection obligations that would benefit larger carriers with significantly greater resources. Indeed, the legislative intent is very specific in stating that Section 251(f)(2) is particularly applicable where "a telecommunications carrier that is a large global or nationwide entity that has financial or technological resources that are significantly greater than the resources of the company or carrier" requests interconnection with the petitioning local exchange carrier.[17] Section 251(f)(2) is definitely not intended

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[17]The debate on final Conference Committee version of the 1996 Act in the U.S. House of Representatives supports the view that the protection afforded by this provision was intended to apply to smaller local exchange carriers. See 142 Cong. Rec. H1163 (daily ed. Feb. 1, 1996) (statement of Rep. Lincoln) ("The waivers and modifications created in both the Senate and House bills were carefully blended in conference to balance the desire to promote competition in the local exchange area while ensuring that **smaller providers** have the necessary flexibility to comply with the bills'

to protect local exchange carriers from interconnection obligations to smaller or similarly-sized carriers that have fewer or similar resources. Section 251(f)(2) must be viewed as a vehicle to promote competition in the local exchange arena. Accordingly, the Commission should issue guidelines that clearly reflect that the discretion of the State commissions to entertain such a petition is very limited.

Centennial urges the Commission to adopt guidelines that direct the State commissions to implement Section 251(f)(2) in light of (a) the pro competitive purposes of the 1996 Act; (b) the legislative history of Section 251(f)(2) which requires a pro-competitive interpretation; (c) the directive of Section 253(a) of the 1996 Act that prohibits a State statute or regulation or other legal requirement that itself prohibits or has the effect of prohibiting the ability of any entity to provide any telecommunications service; and (d) the prohibition against cross-subsidization in Section 254(k) of the 1996 Act which requires a view that the Section 251(f)(2) criteria are not intended to preserve or protect cross-subsidization between competitive and monopolistic telecommunications services or as a tool to promote universal service or increase telephone penetration.

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interconnection requirements." (emphasis added.))

Finally, it also should be made clear that State commissions have limited discretion to decide that a petitioning LEC has met one or more of the Section 251(f)(2) criteria. For example, with respect to the test concerning "a significant adverse economic impact on users of telecommunications services generally," the Commission should direct the State commissions that the phrase "users of telecommunications services generally" requires a finding that the "significant adverse economic impact" cuts across all telecommunications services and is not limited to users of local exchange service.

III. THE COMMISSION SHOULD CLARIFY THAT IT WILL ACT WHERE THERE IS NO STATE COMMISSION WITH AUTHORITY TO ACT PURSUANT TO SECTION 252 OF THE 1996 ACT

In Section 252 of the 1996 Act, Congress assigned to State commissions certain regulatory obligations in connection with the formation of an interconnection agreement. Upon request, a State commission must mediate and/or arbitrate open issues between negotiating parties and must approve or reject the overall interconnection agreement.[18] Section 252(e)(5) requires that the Commission assume responsibility for any proceeding or matter arising under Section 252 in which the State commission "fails to act to carry out its responsibility" under that section. In the

[18]Section 252(a and (b).

Notice, the Commission asks for "comments on the circumstances under which a state commission should be deemed to have 'failed to act' under section 252(e)(5)."[19]

In drafting Section 252, Congress made a fundamental assumption - that each State has a commission with authority to carry out its responsibilities under Section 252. However, while that may be a correct assumption for each of the 50 states, it is an incorrect assumption for the Commonwealth of Puerto Rico. As described below, the Commission must clarify that the lack of a State commission with authority to fulfill the statutory obligations that Congress has assigned to State commissions constitutes a per se failure to act within the meaning of Section 252.

In the particular case of the Commonwealth of Puerto Rico, there is no State commission that has regulatory authority over the Puerto Rico Telephone Company ("PRTC"), the Tier 1 LEC serving all of Puerto Rico. As the only incumbent local exchange carrier in Puerto Rico, PRTC is the only carrier subject to all of the interconnection obligations in Sections 251(a), (b) and (c) of the 1996 Act. By virtue of a 1974 law that authorized the acquisition of PRTC by the government of Puerto Rico, PRTC claims a statutory monopoly with respect to all intrastate

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[19]Notice at ¶265.

telecommunications services.[20] Beyond the legal preclusion of competition in the provision of any intrastate telecommunications services, PRTC's own intrastate telecommunications operations are effectively unregulated. In the Commonwealth of Puerto Rico, regulation of the rates or offerings of any of PRTC's services or facilities by any regulatory entity is flatly prohibited.[21] Indeed, the law makes clear that PRTC is self-regulating.[22] The

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[20] 27 L.P.R.A. § 403(b). In fact, despite recognition by the Puerto Rico Public Service Commission ("PRPSC") that Section 253 of the 1996 Act prohibits the statutory preclusion of intra-island telecommunications competition, PRTC has filed a court challenge to the self-executing nature of Section 253 in an effort to further delay the onset of intra-island telecommunications. Unfortunately, authorization of a competitive intra-island telecommunications service provider by the PRPSC is meaningless because PRTC refuses to provide the necessary interconnection and there is no regulatory forum in Puerto Rico with jurisdiction over PRTC to address this problem.

[21] 27 L.P.R.A. § 410. In fact, PRTC has challenged the jurisdiction of the PRPSC over any aspect of intra-island telecommunications and continues to fiercely protest any application to provide such telecommunications services filed at the PRPSC on the grounds that the law prohibits the provision of intra-island telecommunications services by anyone other than PRTC, that the PRPSC has no jurisdiction over PRTC.

[22] 27 L.P.R.A. § 407(m). There are two equally compelling regulatory anomalies in this structure. First and most obvious is the fact that the only entity in Puerto Rico with any degree of responsibility for PRTC and its services is its own direct parent. The relationship between PRTA and PRTC is that of parent-subsidiary with all the legal obligations and fiduciary duties that characterize such relationships. The second and equally compelling regulatory anomaly is de facto in nature. Although, under Commonwealth law, PRTA is empowered to regulate itself, there is no evidence that PRTA operates as even a nominal regulatory agency. PRTA has not promulgated any procedural or substantive rules. It